

2012

Volume 62 Issue 4 (2012)

Case Western Reserve University Law Review

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Case Western Reserve University Law Review, *Volume 62 Issue 4 (2012)*, 62(4) Case W. Res. L. Rev. Front Matter (2012)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol62/iss4/18>

This Front Matter is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

**CASE
WESTERN
RESERVE
LAW REVIEW**

Volume 62, Number 4
Summer 2012



SCHOOL OF LAW

CASE WESTERN RESERVE
UNIVERSITY

CASE WESTERN RESERVE LAW REVIEW

VOLUME 62

SUMMER 2012

NUMBER 4

Managing Editor

BENJAMIN GALEA

Editor in Chief

JOHN MURRAY

Publisher

CHRISTOPHER JONES

Executive Articles Editor

SAM CARMARDO

Executive Contributing Editor

SARAH OSMER

Executive Notes Editor

MARK BRNCIK

Executive Symposium Editor

ANDREA LEE

Executive Production Editor

DANIEL NATALIE

Associate Coordinator

EMILY COHEN

Contributing Editors

DANTE MARINUCCI

ISKRA MIRALEM

AMANDA MCHENRY

Senior Editors

HANNAH HOLLIFIELD

JOSEPH HOMEL

KIMBERLY KLATKA

NICOLE MCGRATH

MOLLY MCQUILLEN

CHARLES RALEY

RYAN RAWLINGS

JOSEPH RICOTTA

MARK SCHUBER

GEORGE SKUPSKI

Associate Editors

LAURA BERTRAM

ROBERT CHEREN

ANDREW CLARK

SARA CORRADI

DANIEL FALK

ISAAC FIGUERAS

EPHRAIM FOLBERG

DAVID FRANTZ

JOSHUA FRIEDMAN

DUSTIN GODENSWAGER

ANDREW GURAN

PAUL JANOWICZ

VERONICA LAMBILLOTTE

NELSON LEESE

HOPE LU

ANTHONY MARTUCCI

EMILY MYERS

KYLE MYSKA

DANIEL PESCIOTTA

BENJAMIN RISTAU

GREGORY SCHOLAND

LESLIE SHAFER

AURELIA TUNRU

DANIEL VERKHLIN

Faculty Advisor

JONATHAN L. ENTIN

CASE WESTERN RESERVE UNIVERSITY

SCHOOL OF LAW FACULTY

Administrative Officers

LAWRENCE E. MITCHELL, B.A., J.D., *Dean*
 JONATHAN L. ENTIN, A.B., J.D., *Associate Dean for Academic Affairs*
 JACQUELINE D. LIPTON, B.A., LL.B., LL.M., Ph.D., *Associate Dean for Faculty Development and Research*
 KENNETH R. MARGOLIS, B.A., J.D., *Associate Dean of Experiential Education*
 ALYSON S. ALBER, B.S., J.D., *Associate Dean for Enrollment Planning and Strategic Initiatives*
 SARAH MCFARLANE POLLY, B.A., J.D., *Associate Dean for Student Services*
 JT GARABRANT, B.S., C.F.R.E., *Associate Dean for Development and Public Affairs*
 KELLI C. CURTIS, B.A., J.D., *Assistant Dean of Admissions*
 CRYSTAL D. TAYLOR, B.S., M.B.A., *Assistant Dean for Finance and Administration and Chief Financial Officer*

Professors Emeriti

ARTHUR D. AUSTIN II, B.A., J.D., *Edgar A. Hahn Professor Emeritus*
 RONALD J. COFFEY, A.B., LL.B., LL.M.
 MELVYN R. DURCHSLAG, B.S., J.D.
 ROBERT P. LAWRY, B.A., J.D., DIP. LAW, *Director, Center for Professional Ethics*
 JAMES W. MCELHANEY, A.B., LL.B., *Joseph C. Hostetler Professor Emeritus of Trial Practice and Advocacy*
 EDWARD A. MEARNES, JR., B.A., J.D.
 SPENCER NETH, B.A., J.D., LL.M.
 SIDNEY I. PICKER, JR., A.B., LL.B., LL.M.
 MORRIS G. SHANKER, B.S.E.E., M.B.A., J.D., *John Homer Kapp Professor Emeritus*

Professors of Law

JONATHAN H. ADLER, B.A., J.D. <i>Johann Verheji Professor and Director, Center for Business Law and Regulation</i>	JACQUELINE D. LIPTON, B.A., LL.B., LL.M., Ph.D. <i>Co-Director, Center for Law, Technology, and the Arts and Associate Director, Frederick K. Cox International Law Center</i>
JESSICA WILEN BERG, B.A., J.D., M.P.H. <i>Professor of Law, Bioethics, and Public Health and Associate Director, Law-Medicine Center</i>	JUDITH P. LIPTON, B.S., M.S.S.W., J.D. <i>Co-Director, Milton A. Kramer Law Clinic Center</i>
DAVID J. CARNEY, B.A., J.D.	KENNETH R. MARGOLIS, B.A., J.D. <i>Director, CaseArc Integrated Lawyering Skills Program</i>
JUSCELINO F. COLARES, LL.B., M.A., Ph.D., J.D.	LOUISE W. MCKINNEY, B.A., J.D.
GEORGE W. DENT, JR., B.A., J.D., LL.M. <i>Schoff-van den Eynden Professor of Business Organizations Law</i>	KEVIN C. MCMUNIGAL, B.A., J.D. <i>Judge Ben C. Green Professor</i>
JONATHAN L. ENTIN, A.B., J.D. <i>Professor of Law and Political Science</i>	LAURA E. McNALLY, B.A., J.D.
SCOTT FINE, B.A., M.B.A. <i>Professor for the Practice of Banking and Finance and Law</i>	MAXWELL J. MEHLMAN, B.A., J.D. <i>Arthur E. Petersilge Professor, Professor of Bioethics, and Director, Law-Medicine Center</i>
SHANNON E. FRENCH, B.A., Ph.D. <i>Inamori Professor of Ethics, Professor of Law, and Director of the Inamori International Center for Ethics and Excellence</i>	KATHRYN S. MERCER, A.B., M.S.S.W., J.D., Ph.D.
LEON GABINET, Ph.D., J.D. <i>Coleman P. Burke Professor</i>	LAWRENCE E. MITCHELL, B.A., J.D. <i>Joseph C. Hostetler—Baker & Hostetler Professor</i>
PETER M. GERHART, B.A., J.D.	DALE A. NANCE, B.A., M.A., J.D. <i>John Homer Kapp Professor</i>
PAUL C. GIANNELLI, B.A., M.S.F.S., J.D., LL.M. <i>Distinguished University Professor and Albert J. Weatherhead III and Richard W. Weatherhead Professor</i>	CRAIG ALLEN NARD, B.A., J.D., LL.M., J.S.D. <i>Tom J.E. and Bette Lou Walker Professor of Law and Co-Director, Center for Law, Technology, and the Arts</i>
JONATHAN C. GORDON, B.A., J.D.	MATTHEW J. ROSSMAN, B.A., J.D. <i>Co-Director, Milton A. Kramer Law Clinic Center</i>
RICHARD K. GORDON, B.A., J.D.	MICHAEL P. SCHARF, A.B., J.D. <i>John Deaver Drinko—Baker & Hostetler Professor; Director, Frederick K. Cox International Law Center; and Director, Henry T. King, Jr. War Crimes Research Office</i>
B. JESSIE HILL, B.A., J.D. <i>Associate Director, Center for Social Justice</i>	CALVIN WILLIAM SHARPE, B.A., M.A., J.D. <i>Galen J. Roush Professor and Director, Center for the Interdisciplinary Study of Conflict and Dispute Resolution</i>
SHARONA HOFFMAN, B.A., J.D., LL.M. <i>Professor of Law and Bioethics and Co-Director, Law-Medicine Center</i>	BARBARA R. SNYDER, B.A., J.D. <i>President of the University</i>
ERIK M. JENSEN, S.B., M.A., J.D. <i>David L. Brennan Professor</i>	THEODORE L. STEINBERG, B.A., Ph.D. <i>Adeline Barry Davee Distinguished Professor of History and Law</i>
LEWIS R. KATZ, A.B., J.D. <i>John C. Hutchins Professor and Director, Graduate Program for Foreign Students in U.S. & Global Legal Studies</i>	ROBERT N. STRASSFELD, B.A., M.A., J.D. <i>Associate Director, Frederick K. Cox International Law Center, Institute for Global Security Law and Policy</i>
JULIET P. KOSTRITSKY, A.B., J.D. <i>Everett S. and Eugenia D. McCurdy Professor</i>	MARTHA A. WOODMANSEE, B.A., M.A. Ph.D. <i>Professor of English and Law</i>
RAYMOND SHIH RAY KU, A.B., J.D. <i>Co-Director, Center for Law, Technology, and the Arts</i>	RUQAIYAH A. YEABBY, B.S., M.P.H., J.D.
WILBUR C. LEATHERBERRY, A.B., J.D. <i>Director, Skills Program and Externships</i>	

Associate Professors of Law

KATHLEEN M. CARRICK, B.A., M.L.S., J.D., <i>Director of the Law Library</i>	MAUREEN SHERIDAN KENNY, B.A., J.D.
JENNIFER I. CUPAR, B.S., J.D.	KENNETH F. LEDFORD, B.A., J.D., M.A., Ph.D. <i>Associate Professor of History and Law</i>
BRIAN K. GRAN, B.A., J.D., Ph.D. <i>Associate Professor of Sociology and Law</i>	CASSANDRA BURKE ROBERTSON, B.A., M.A., M.P. Aff., J.D.
DANIEL A. JAFFE, B.A., J.D.	CAROLYN SEYMOUR, B.A., J.D.

Assistant Professors of Law

AVIDAN Y. COVER, B.A., J.D.	IRINA D. MANTA, B.A., J.D.
CHARLES R. KORSMO, S.B., J.D.	ANDREW S. POLLIS, A.B., J.D.

Visiting Faculty

CARRIE GRIFFIN BASAS, B.A., J.D.	ILHYUNG LEE, B.A., M.A., J.D.
KARLA L. BELL, B.A., J.D.	YURI R. LINETSKY, B.A., J.D.
MICHAEL J. BENZA, B.A., M.A., J.D.	CARMEN NASO, B.A., J.D.
CAROL T. FOX, B.A., M.A., Ph.D., J.D.	DAVID P. PORTER, B.S., J.D.
JON GROETZINGER, JR., A.B., J.D. <i>Director, China Law Program</i>	STEVEN H. STEINGLASS, B.S., LL.B.
DAVID R. KOCAN, B.S., J.D.	

The CASE WESTERN RESERVE LAW REVIEW (ISSN 0008-7262), formerly the Western Reserve Law Review, is published quarterly by the students of the Case Western Reserve University School of Law. Postage paid at Cleveland, Ohio and at additional mailing offices. Editorial and business offices are located at Case Western Reserve University, 11075 East Boulevard, Cleveland, Ohio 44106, telephone (216) 368-3312. POSTMASTER: Send address changes to Case Western Reserve Law Review, 11075 East Boulevard, Cleveland, Ohio 44106. The submission of unsolicited manuscripts is invited. Subscriptions are entered for the entire volume for \$32.00 per year (\$34.00 outside the U.S.). Subscriptions are automatically renewable. The Review's policy requires that unless a claim for nonreceipt of an issue is received within three months after the mailing date, the Review cannot be held responsible for supplying that issue without charge. Single issues of the current volume are available for \$16.00 each, plus shipping and handling. Back issues from earlier volumes are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209. Citations conform to *The Bluebook: A Uniform System of Citation* (19th ed. 2010), copyright by the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review, and the Yale Law Journal. Style conforms generally to *The Chicago Manual of Style* (16th ed. 2010).

For all photocopy or republication requests, please contact Copyright Clearance Center, Inc. by mail: 222 Rosewood Drive, Danvers, MA 01923, by phone: (978) 646-2600, by fax: (978) 646-8600, by email: infoat@copyright.com, or online: www.copyright.com. This issue went to press in July 2012.

CASE WESTERN RESERVE LAW REVIEW

VOLUME 62

SUMMER 2012

NUMBER 4

COPYRIGHT © 2012 BY CASE WESTERN RESERVE LAW REVIEW

LAW REVIEW SYMPOSIUM 2011: *BAKER V. CARR* AFTER 50 YEARS: APPRAISING THE REAPPORTIONMENT REVOLUTION

INTRODUCTION <i>Jonathan L. Entin</i>	941
FROM <i>BAKER V. CARR</i> TO <i>BUSH V. GORE</i> , AND BACK <i>Nelson Lund</i>	947
<i>BAKER, BUSH</i> , AND BALLOT BOARDS: THE FEDERALIZATION OF ELECTION ADMINISTRATION <i>Daniel Tokaji</i> <i>Owen Wolfe</i>	969
JUDICIAL PROTECTION OF POPULAR SOVEREIGNTY: REDRESSING VOTING TECHNOLOGY <i>Candice Hoke</i>	997
POPULATION EQUALITY AND THE IMPOSITION OF RISK ON PARTISAN GERRYMANDERING <i>Justin Buchler</i>	1037
THE ONE PERSON, ONE VOTE STANDARD IN REDISTRICTING: THE USES AND ABUSES OF POPULATION DEVIATIONS IN LEGISLATIVE REDISTRICTING <i>Thomas L. Brunell</i>	1057
ONE PERSON, ONE VOTE?—WHY CITIZENS’ VOTES CARRY UNEQUAL WEIGHT DESPITE <i>BAKER</i> AND HOW IT MATTERS <i>John D. Griffin</i> <i>Brian Newman</i>	1079
CONGRESS, THE SOLICITOR GENERAL, AND THE PATH OF REAPPORTIONMENT LITIGATION <i>Michael E. Solimine</i>	1109
<i>BAKER V. CARR</i> , THE CENSUS, AND THE POLITICAL AND STATISTICAL GEOGRAPHY OF THE UNITED STATES: THE ORIGIN AND IMPACT OF PUBLIC LAW 94-171 <i>Margo Anderson</i>	1153
REDISTRICTING PRINCIPLES FOR THE TWENTY-FIRST CENTURY <i>Micah Altman</i> <i>Michael P. McDonald</i>	1179

NOTES

GETTING TO “SOMETIMES”: EXPANDING TEACHERS’ FIRST AMENDMENT RIGHTS THROUGH “ <i>GARCETTI’S</i> CAVEAT” <i>Benjamin C. Galea</i>	1205
NO LONGER SECRET: OVERCOMING THE STATE SECRETS DOCTRINE TO EXPLORE MEANINGFUL REMEDIES FOR VICTIMS OF EXTRAORDINARY RENDITION <i>Daniel Joseph Natalie</i>	1237

COMMENT

EMPTY CREDITOR SYNDROME AND VIVISEPTURE: PREVENTING CREDIT-DEFAULT-SWAP HOLDERS FROM PUSHING COMPANIES INTO PREMATURE GRAVES BY REFUSING TO NEGOTIATE RESTRUCTURING <i>Dante Altieri Marinucci</i>	1285
---	------